89-461 (1)

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

FRANK J. CAMOSCIO,

PETITIONER,

VS.

MICHAEL S. DUKAKIS, ET AL.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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62 pp

QUESTIONS PRESENTED

A. HOW DID THE THREE RESPONDENTS VIOLATE THE PETITIONER'S CIVIL RIGHTS ?

B. DOES THIS COURT HAVE JURISDICTION ?

C. SHOULD JUDGE ROBERT KEETON HAVE RECUSED HIMSELF FROM HEARING THIS CASE SINCE ONE OF THE RESPONDENTS IS A PERSONAL FRIEND ?

D. DID JUDGE KEETON DENY THE PETITIONER DUE PROCESS ?

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner, Frank J. Camoscio, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in the above-entitled cause on June 28, 1989 and July 19, 1989.

I.

OPINION BELOW

The memorandum opinions of the Court of Appeals are attached as Appendix A. The district court's opinions are attached as Appendix B.

* * *

II.

JURISDICTION

The opinions of the Court of Appeals for the First Circuit were filed on June 28, 1989 and July 19, 1989. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment, Section 1. of the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV.

STATEMENT OF FACTS

On December 19, 1986 the petitioner, Frank J. Camoscio, filed a simple tort against respondent Michael S. Dukakis for failing to do his duty as governor and for lying on a radio talk show concerning the petitioner. Respondent Dukakis committed these wrongdoings in order to protect his political career

and cover up his wife's drug addiction. Respondent court clerk Michael Joseph Donovan's office denied the petitioner the right to file papers against Michael S. Dukakis in Suffolk Superior Court forcing the petitioner to appear before Judge Morse, chief justice of Suffolk County, who ruled that the petitioner had the right to file a complaint against respondent Dukakis and the complaint was proper meeting all rules of the Massachusetts rules of civil procedure. Respondent Dukakis filed his answer to the complaint late. The petitioner filed a request for default which was never acted upon by respondent clerk Donovan. Petitioner was forced to file a motion to have default entered and to hold respondent Dukakis's attorney in contempt of court for lying to the court concerning the date upon which material was mailed to the petitioner. State

court Judge John Paul Sullivan heard this motion on January 26, 1987 and denied it even though the petitioner had proved that the respondent Dukakis's attorney had failed to send the petitioner a copy of his motion filed with the court on January 9, 1987. Petitioner gave proof to the court which consisted of a copy of the envelope dated January 11, 1987 by the postal meter. This proved that the respondent's attorney never mailed on January 9, 1987 a copy of papers filed with the court as claimed by his affidavit.

On January 29, 1987 Judge John Paul Sullivan heard a motion by respondent Dukakis's attorney to dismiss the case. Judge John Paul Sullivan told both the petitioner and the respondent's attorney that the case could not be dismissed without supporting affidavits and memorandum of law as required by Massa-

chusetts rules of civil procedure. The petitioner was shocked when he received a copy of Judge John Paul Sullivan's order stating that he could file a new complaint without prejudice within thirty days. Petitioner filed a Notice of Appeal immediately but was denied this right by respondent clerk Michael Joseph Donovan. Respondent Donovan refused to assemble the record and to transmit appropriate paperwork to the state appeals court, thus denying the petitioner proper access to the courts.

Petitioner filed suit in United States Federal District Court of Boston for civil rights violations committed by the three respondents. Judge Robert Keeton was assigned to hear the case. Judge Keeton's decisions found in Appendix B and his personal relationship with one of the respondents Michael Dukakis was one of the central issues before the

Federal Court of Appeals since Judge Keeton refused to recuse himself from the case upon the petitioner's discovery of Judge Keeton's relationship with Michael Dukakis one of the respondents.

V.

REASONS FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF A PERSON'S CIVIL RIGHTS VIOLATIONS UNDER THE COLOR OF STATE LAW.

The petitioner Frank J. Camoscio states that respondent Donovan violated his civil rights by refusing to enter default against Michael S. Dukakis on January 9, 1987. Respondent Donovan also refused to assemble the record for appeal by petitioner Camoscio against

Dukakis. The petitioner had been denied due process and equal access to the courts under Article 14 of the U.S. Constitution. The petitioner would like to cite the following cases: Sigafus v. Brown, C.A.Ill. 1969, 416 F. 2d 105, "Deprivation of materials necessary to afford reasonable access to the courts violates the due process clause of U.S. C.A. Const. Amend. 14 and a federal court has jurisdiction of claim for damages based on such deprivation." and Mansell v. Saunders, C.A.Fla. 1967, 372 F. 2d 573, "This section providing civil action for deprivation of rights embraces deprivation of both due process of law and equal protection of laws, it contemplates such deprivation through unconstitutional application of law by conspiracy or otherwise and it permits damages, including punitive damages."

The respondent Judge John Paul

Sullivan violated the petitioner's constitutional rights by refusing to enter default and contempt of court against Dukakis's attorney Francis G. Chase. Petitioner had proved beyond any reasonable doubt that Chase had lied to the court concerning papers mailed to the petitioner. The petitioner had also proved that he was entitled to default being entered in his favor. Chase offered neither counter-arguments nor sworn affidavits to the contrary. This violated the petitioner's right of due process, since Judge Sullivan had no legal basis for his decision. The petitioner cites the following case: Brunnenkant v. Laird, 360 F. Supp. 1330, "Essence of a fair and impartial adjudication is not only a due process hearing but also a decision containing findings based on sufficient evidence. U.S.C.A. Const. Amend. 1."

The petitioner also pointed out that Judge Sullivan's order written on January 29, 1987 contradicted what Judge Sullivan had said in the courtroom. Judge Sullivan stated in the courtroom that the complaint could not be dismissed unless Dukakis gave supporting affidavit and memorandum of law. The January 29, 1987 order stated that the petitioner could file a new complaint without prejudice within thirty days. This violated the petitioner's Constitutional rights since Chief Justice Morse had inspected the complaint on December 19, 1986 in which he stated that there was nothing wrong with the petitioner's complaint against Dukakis and ordered the clerk to accept the filing. The petitioner states that Judge Sullivan lacked jurisdiction to write his January 29, 1987 order since Chief Justice Morse had already ruled on the issue. The only

judges under state law who had jurisdiction would be the appeals court justices.

The respondent Michael S. Dukakis was given absolute immunity by Judge Keeton in the lower federal court. This means that respondent Dukakis knowingly allowed and participated in the fraudulent removal of the petitioner's podiatric license. The purpose of the civil rights laws are to protect the citizens from wrongdoings of corrupt government officials. Why should respondent Dukakis be given absolute immunity for knowingly and wrongfully participating in a scheme to remove the petitioner's livelihood, yet Richard Nixon was forced to resign from the presidency for a far less serious crime ? The petitioner cites the following case: Monell v. Department of Social Services of N.Y., 429 U.S. 1071, 97 S. Ct. 807, 50 L. Ed. 2d 789, "... the action that is alleged to be

unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers."

B. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF JURISDICTION FOR CIVIL RIGHTS VIOLATIONS.

The petitioner states that this court has jurisdiction since the petitioner has clearly demonstrated how the respondents have violated his civil rights. The petitioner cites the following cases: Irwin v. Calhoun, D.C. Mass. 1981, 522 F. Supp. 576, "Section 1983 of Title 42 governing civil action for deprivation of rights and section 1343 of this title providing that district court shall have original jurisdiction of any

civil action commenced by any person for enforcement of civil rights do not 'by reference' restrict scope of this section stating that district court shall have original jurisdiction of all civil actions arising under Constitution, laws, or treaties of the United States, and exercise of pendant party jurisdiction under this section governing federal question jurisdiction is not thereby negated by implication," and Burt v. Abel, C.A.S.C. 1978, 585 F. 2d 613, on remand 466 F. Supp. 1234, "A deprivation of procedural due process is an independent constitutional tort, actionable under this section governing civil action for deprivation of rights with or without proof of action injury."

C. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DELINEATE WHEN A FEDERAL JUDGE SHOULD NOT HEAR A CASE

INVOLVING A FRIEND.

The petitioner stated in his Motion for Reconsideration that Judge Robert Keeton should not have heard any of the matters concerning this case since he was a dear and personal friend of Michael Dukakis. Respondent Dukakis described Judge Keeton in his published biography as his mentor and he described his long personal and working relationship with Judge Robert Keeton. Judge Keeton stated in his Memorandum and Order of February 10, 1989, "In order for recusal of a district court judge to be appropriate under either 28 U.S.C. § 144 or § 455, the party seeking recusal must offer affidavits setting forth facts which, if true, would 'create a reasonable doubt concerning the judge's impartiality, not in the mind of the judge himself or even necessarily in the mind

of the litigant filing the motion . . . but rather in the mind of the reasonable man.' " The petitioner met the judge's criteria by filing an affidavit stating that the judge had a personal and political relationship with respondent Dukakis, Judge Keeton never denied this fact in his February 10, 1989 Memorandum and Order. A reasonable man would assume that Judge Keeton could not act fairly and impartially. The petitioner cites the following case: "Pollgreen v. Morris, 496 F. Supp. 1042, "Fundamental indispensable protections of procedural due process are notice and right to be heard by impartial decision maker, and both must be granted at meaningful time and in meaningful manner. U.S.C.A. Const. Amend. 5."

D. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO DECIDE WHETHER JUDGE ROBERT KEETON DENIED THE PETITION-

ER DUE PROCESS.

The petitioner states that Judge Robert Keeton denied him due process by never sending him a copy of the August 22, 1988 Memorandum and Order. Judge Keeton was clearly prejudiced against him when he wrote a new order on October 18, 1988 because neither the respondents nor the petitioner had filed any objections to his August 22, 1988 ruling. Why would Judge Keeton have changed his mind concerning the dismissal of the case for respondent Donovan almost two months later, unless someone had brought it to his attention ? These actions violated the petitioner's right of due process and proves that Judge Keeton was prejudice against the petitioner.

VI.

CONCLUSION

This case presents important constitutional issues regarding civil rights violations, absolute immunity, and judge's duty to recuse himself from hearing a case. This court has an opportunity to clarify the limits and boundaries of absolute immunity and whether a federal judge can sit and hear a case concerning personal friends. If this Court fails to act upon this case, it would allow the lower federal court to adopt and follow these unconstitutional precedences.

Respectfully submitted,

Frank J. Camoscio

Frank J. Camoscio
Pro se
252 Hanover Street
Boston, Massachusetts 02113

DATED: September 15, 1989

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992

Domenic Bruno
9/15/89

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For Writ of Certiorari were mailed to Judith Fabricant, Assistant Attorney General, One Ashburton Place, Boston, Massachusetts 02108, Attorney for Respondents Michael S. Dukakis, Michael Joseph Donovan, John Paul Sullivan on this 15th day of September 1989.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under the pains and penalties of perjury.

Frank J. Camoscio

Frank J. Camoscio
Pro Se

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
Domenic Bruno
9/15/89

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 89-1215

FRANK J. CAMOSCIO,
Plaintiff, Appellant,

v.

MICHAEL S. DUKAKIS, ET AL.,
Defendants, Appellees.

Before

Bownes, Torruella and Selya,
Circuit Judges.

ORDER OF COURT

Entered June 28, 1989

For substantially the reasons stated by the district court in its July 14, 1988, October 18, 1988, and

APPENDIX "A"

February 10, 1989 orders, judgment was properly entered for defendants. Also, we note that plaintiff's complaints about the state judges' rulings are not cognizable in the lower federal courts for the reasons stated in Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923). See also Decker v. Hillsborough County Attorney's Office, 845 F. 2d 17, 20-21 (1st Cir. 1988) (lower federal courts may not sit in review of state court orders).

The district court judge did not err in refusing to recuse himself.

The Commonwealth's motion for summary affirmance is granted.

Affirmed.

By the Court:

Francis P. Scigliano

Clerk.

[cc: Messrs. Camoscio and Ms. Fabricant]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 89-1215

FRANK J. CAMOSCIO,
Plaintiff, Appellant,

v.

MICHAEL S. DUKAKIS, ET AL.,
Defendants, Appellees.

Before

Campbell, Chief Judge,
Bownes, Breyer, Torruella and Selya,
Circuit Judges.

ORDER OF COURT

Entered July 19, 1989

The motion for rehearing and for en banc consideration is denied.

By the Court:

Francis P. Scigliano

Clerk.

[cc: Mr. Camoscio and Ms. Fabricant]

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FRANK J. CAMOSCIO Plaintiff v. MICHAEL S. DUKAKIS, et al.,	CIVIL ACTION NO. 88-952-K

Memorandum and Order

July 14, 1988

Plaintiff filed this action on April 27, 1988 to complain of various violations of his "civil rights." On May 17, 1988, defendants jointly filed a motion to dismiss with memorandum of law in support (Docket Nos. 5, 6). Plaintiff opposed the motion to dismiss (Docket No. 7).

APPENDIX "B"

Defendants' motion and the related submissions are addressed in this Memorandum.

I.

The truth of allegations of the complaint is not at issue before the court when it is ruling on a motion to dismiss. The motion must be denied if the allegations of the plaintiff's complaint, if proved at trial, would be sufficient to support a claim. Plaintiff Camoscio alleges that he informed defendant Dukakis on several occasions that a high school dropout and ex-convict had been awarded a podiatry license and a narcotics license by administrative boards under the control of Dukakis; that he informed Dukakis that plaintiff's podiatry license had been removed without cause; that despite Dukakis' personal knowl-

edge of these facts, Dukakis failed to investigate the administrative boards under his control and failed to correct their mistakes; that in late January 1986, Dukakis stated on public radio that he was unaware of any fraud or criminal activity involving administrative boards under his control; and that this statement was a lie in light of the facts made available to Dukakis by plaintiff.

Plaintiff alleges also that on December 19, 1986, plaintiff filed suit against Dukakis in state court alleging substantially the same facts summarized in the paragraph above; that on January 9, 1987, plaintiff moved in state court that a default judgment be entered, that, nevertheless, defendant Michael Joseph Donovan, Clerk of the Superior Court, refused to enter default judgment; and that Donovan's refusal was in

violation of state rules of civil procedure.

Plaintiff alleges that on January 30, 1987, defendant John Paul Sullivan, a Superior Court judge, allowed the motion of Dukakis to dismiss plaintiff's complaint in state court; that in violation of state rules of civil procedure, Judge Sullivan did not allow plaintiff the opportunity to amend his complaint; that plaintiff has attempted to appeal the decision of Judge Sullivan dismissing his complaint, but that defendant Donovan has refused to assemble the record for appeal. Plaintiff alleges that the intentional acts of Donovan have prevented plaintiff from pursuing his appeal.

II.

Plaintiff's complaint does not request any relief from defendant Sullivan. In fact, in plaintiff's Oppo-

sition to Motion to Dismiss, he states that he "only made [Judge Sullivan] party to the suit to verify all facts stated in the case." Docket No. 7, p.1. Thus, plaintiff has not even attempted to state a claim against defendant Sullivan. For this reason, plaintiff's complaint is dismissed as to defendant Sullivan.

III.

Plaintiff articulates no explicit basis for his claim against Dukakis. Because he argues that he was deprived of his "civil rights," the court will treat plaintiff's complaint as one under 42 U.S.C. § 1983. In order to state a claim under section 1983, plaintiff must allege facts that establish (1) state action and (2) a violation of his federal rights. Parratt v. Taylor, 451 U.S. 527, 535 (1981). I conclude that plaintiff has not al-

leged facts with respect to defendant Dukakis sufficient to establish a violation of his federal rights.

Plaintiff's submissions raise several arguments. First, he argues that Dukakis violated the federal narcotics laws, 21 U.S.C. §§ 841, 843, 846. Plaintiff's allegations, however, fail to allege that Dukakis distributed or possessed any controlled substances or that he conspired to do so. Second, plaintiff argues that Dukakis failed to investigate the charges of fraud and corruption that plaintiff filed. Plaintiff has not identified, however, the source of any federal duty to investigate and correct the specific activities of an administrative board under the control of the Governor. Plaintiff's final argument is based on the radio broadcast. This allegation against Dukakis asserts, at most, a

common law claim for defamation.

"In order for the remedy provided by § 1983 to be available, a party must establish the violation of a federal right independant of § 1983." New York Airlines, Inc. v. Dukes County, 623 F. Supp. 1435, 1445 (D. Mass. 1985). For this reason, plaintiff's complaint fails to state a claim against defendant Dukakis.

IV.

Plaintiff identifies two bases for his section 1983 claim against defendant Donovan. To the extent that his claim is based on Donovan's alleged failure to comply with state rules of civil procedure, plaintiff's section 1983 claim must be dismissed for failure to state a violation of his federal rights. To the extent that his claim is based on Donovan's refusal to assemble the record for his appeal, however,

plaintiff succeeds in stating a claim.

Plaintiff's allegations are sufficient to allow proof at trial of an interference with his right of access to the courts. "[I]nterference with or deprivation of the right of access to the courts is actionable under § 1983." Graham v. National Collegiate Athletic Ass'n, 804 F. 2d 953, 959 (6th Cir. 1986).

Defendant Donovan's argument for application of Burford abstention or absolute immunity must be rejected. The First Circuit, interpreting Supreme Court precedent, has concluded that "there must be a difficult question of state law in a Burford abstention case." Allstate Insur. Co. v. Sabbagh, 603 F. 2d 228, 230 n.2 (1st Cir. 1979). No difficult question of state law has been identified by defendants in this case. Absolute immunity is available

to clerks of court who act to carry out a judge's orders, see Slotnick v. Garfinkle, 632 F. 2d 163 (1st Cir. 1980), but there is no showing in the present record that defendant Donovan was acting on judicial orders when he allegedly refused to assemble the record for plaintiff's appeal.

ORDER

For the foregoing reasons, it is ORDERED:

Defendants' Motion to Dismiss (Docket No. 5) is allowed as to defendants Sullivan and Dukakis. The motion is denied as to defendant Donovan

Robert E. Keeton
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FRANK J. CAMOSCIO Plaintiff v. MICHAEL JOSEPH DONOVAN, Defendant	CIVIL ACTION NO. 88-952-K

Memorandum and Order

October 18, 1988

Plaintiff, Frank Camoscio, brings this action against Michael Donovan, clerk of the Suffolk County Superior Court, alleging that Donovan deprived him of his civil rights by failing to prepare the record of his case for appeal upon Camoscio's filing of a notice of appeal. Camoscio originally also brought claims against Governor Michael Dukakis and Superior Court Judge John Paul Sullivan in this case. On July 14, 1988, this court granted defendants' joint motion to dismiss with respect to

defendants Dukakis and Sullivan.

As noted in this court's July 14, 1988 memorandum, the court interprets the claim against Donovan as stating a valid claim pursuant to 42 U.S.C. § 1983 for interference with Camoscio's access to the courts. Defendant has moved for summary judgment on the ground that Donovan's failure to prepare the record for appeal did not interfere with Camoscio's access to the courts because the appeal was premature and Camoscio therefore had no right to appeal.

In order to establish a cause of action under 42 U.S.C. § 1983, plaintiff must show a violation of his federal rights. Parratt v. Taylor, 451 U.S. 527, 535 (1981). I conclude that plaintiff has not shown and cannot show that Donovan's actions violated his federal civil rights by denying him access

to the courts.

It is undisputed that the decision of Judge Sullivan from which plaintiff sought to appeal was an allowance of a motion to dismiss "without prejudice to the plaintiff filing a new complaint within 30 days." This order was not a final judgment and therefore was not subject to appeal. See, e.g., Proud v. United States, 704 F. 2d 1099, 1100 (9th Cir. 1983); Kozemchak v. Ukranian Orthodox Church of America, 443 F. 2d 401 (2d Cir. 1971). Plaintiff was not entitled to an appeal from Judge Sullivan's decision at that time. Thus, although the proper procedure for Donovan to have followed under Massachusetts Rule 9 of Appellate Procedure would have been to prepare the record so that the court of appeals could deny the appeal as premature, a violation of the Massachusetts Rules

of Appellate Procedure is not equivalent to a denial of the constitutional right of access to the courts. Cf. Bounds v. Smith, 430 U.S. 817, 823 (1977) (" ' [M]eaningful access' to the courts is the touch stone." (quoting Ross v. Moffit, 417 U.S. 600, 615 (1974)). Camoscio was afforded an opportunity to bring his litigation originally and to amend his complaint. I conclude, therefore, that no reasonable juror could find that he was denied meaningful access to the courts.

Defendant has demonstrated that no genuine issue of material fact remains in the case and he is therefore entitled to summary judgment. See Early v. Eastern Transfer, 699 F. 2d 552, 554-55 (1st Cir.), cert. denied., 464 U.S. 824 (1983).

ORDER

For the foregoing reasons, it is

ORDERED:

Defendant's Motion for Summary Judgment is allowed.

Judgment will be entered for the defendant Donovan.

Robert E. Keeton

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FRANK J. CAMOSCIO Plaintiff v. MICHAEL JOSEPH DONOVAN, Defendant	)	CIVIL ACTION NO. 88-952-K

Final Judgment
October 18, 1988

For the reasons stated in the Memoranda of July 14, 1988 and October 18, 1988, it is ORDERED:

Defendants' Motion to Dismiss is allowed as to defendants Sullivan and Dukakis.

Defendant Donovan's Motion for Summary Judgment is allowed.

Final judgment is entered for the defendants.

Robert E. Keeton

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FRANK J. CAMOSCIO, Plaintiff	)	
v.	)	CIVIL ACTION NO. 88-0952-K
MICHAEL J. DONOVAN, Defendant	)	

Memorandum and Order
February 10, 1989

Plaintiff, Frank J. Camoscio, has moved for reconsideration of this court's October 18, 1988 order granting summary judgment on the remaining claims in this case and granting final judgment for the defendants. The plaintiff also requests that I recuse myself on the basis of personal bias pursuant to 28 U.S.C. § 144.

In order for recusal of a district court judge to be appropriate under either 28 U.S.C. § 144 or § 455, the party

seeking recusal must offer affidavits setting forth facts which, if true, would "create a reasonable doubt concerning the judge's impartiality, not in the mind of the judge himself or even necessarily in the mind of the litigant filing the motion . . . but rather in the mind of the reasonable man." United States v. Cowden, 545 F. 2d 257, 265 (1st Cir. 1976), cert. denied, 430 U.S. 909 (1977).

Plaintiff has failed to meet this burder. In the affidavit in support of his motion, plaintiff states only that he "recently discovered Robert E. Keeton's personal and political ties to Michael S. Dukakis," one of the original defendants in this case. The evidence which plaintiff offers in support of this "discovery" is a statement in a political pamphlet entitled "The LaRouche Indictment: A

Dukakis Pre-Election Dirty Trick" which states that "Dukakis's 'no fault insurance' system, supposedly his principal accomplished was developed under the guidance of Harvard Law School professor Robert E. Keeton" and that Michael Dukakis has publicly referred to Keeton as "my mentor." Id. at 7.

The allegation that a judge was regarded by one of the defendants as a mentor is certainly not sufficient to establish a basis for a reasonable person to believe that the judge is partial. The suggestion that a litigant respects a judge has no natural tendency to establish that the judge is partial to the litigant or that the judge's ability to act as an impartial decisionmaker is impaired.

Nor is the mere fact that a judge may have had personal or professional associations with a litigant or someone

associated with the litigant by itself a basis for recusal. Recusal is usually appropriate only "in the presence of such factors as a financial or a strong personal interest in one of the litigants." Brody v. President and Fellows of Harvard College, 664 F. 2d 10, 11 (1st Cir. 1981), cert. denied, 455 U.S. 1027 (1982). Mere acquaintance or some personal friendship is not sufficient. See Town of East Haven v. Eastern Airlines, 304 F. Supp. 1233 (D. Conn. 1969) (stating that an allegation of "a close personal relationship is not sufficient to satisfy the statutory language of 28 U.S.C. § 455"); Firnhaber v. Sensenbrenner, 385 F. Supp. 406, 412 (E.D. Wisc. 1974) (noting that personal friendship with associate of defendant is not basis for recusal). Nor are ordinary professional or political associations. "All judges

come to the bench with a background of experiences, associations and viewpoints. This background alone is seldom sufficient in itself to provide a reasonable basis for recusal." Brody v. President and Fellows of Harvard College, 664 F. 2d at 11. See also Home Placement Service v. Providence Journal Co., 739 F. 2d 671, 675 (1st Cir. 1984), cert. denied, 469 U.S. 1191 (1985); In re United States, 666 F. 2d 690, 696-97 (1st Cir. 1981); Deal v. Warner, 369 F. Supp. 174, 178 (D. Mo. 1973) (holding that a judge who is a former naval officer is not required to recuse himself from cases involving naval regulations). Furthermore, unless a party can establish a reasonable factual basis to doubt a judge's impartiality, then a judge must hear a case as assigned. See Blizard v. Frechette, 601 F. 2d 1217, 1221 (1st Cir. 1979). The

court concludes, therefore, that it must continue to hear this case.

Plaintiff's motion for recusal is also untimely, the court has granted Dukakis' motion to dismiss on the basis of absolute immunity on July 14, 1988 and on October 18, 1988 final judgment was entered for all defendants in this case. Plaintiff's statement that he did not learn the information upon which he bases his allegations until recently is an insufficient justification for the late filing of this motion when he does not even allege that the information was not available to him earlier. A party cannot be allowed to delay filing a motion for recusal until after he learns that the judge has ruled adversely and thereby obtain two opportunities to argue the same case.

With respect to plaintiff's motion for reconsideration, the motion is

denied for the reasons stated in this court's October 18, 1988 Memorandum and Order. Despite plaintiff's statement to the contrary, Judge Sullivan's order was not a final judgment, and was, therefore, not properly appealable. Thus, Camoscio was not denied his right to appeal by the court clerk Donovan's failure to prepare the record for appeal. In addition, neither double jeopardy nor collateral estopped prevented Camoscio from filing a new complaint. Judge Sullivan's order stated that it was a dismissal "without prejudice to the plaintiff filing a new complaint within 30 days." No clearer statement that the filing of a new complaint was not barred was possible. Camoscio's suit against Donovan for failure to prepare the case for appeal was therefore properly dismissed

and Camoscio's motion for reconsideration is denied.

ORDER

For the foregoing reasons, it is ORDERED:

Plaintiff's motion for recusal of the judge pursuant to 28 U.S.C. § 144 and § 455 and assignment of his case to a different judge is denied.

Plaintiff's motion for reconsideration is denied.

Robert E. Keeton

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FRANK J. CAMOSCIO, Plaintiff v. MICHAEL JOSEPH DONOVAN, et al.,	CIVIL ACTION NO. 88-592-K

Memorandum and Order

August 22, 1988

Before the court are plaintiff's Motion to Amend the Complaint (Docket No. 9) and Defendants' Opposition (Docket No. 12).

I.

Insofar as the proposed amended complaint attached to the motion to amend attempts to state a claim against defendants Sullivan and Dukakis, it fails to state a claim on which relief can be granted in this court for the

reasons identified in Parts II and III of this court's Memorandum and Order of July 14, 1988. Leave to file the proposed amendment will be denied because the filing of an amended pleading that still fails to state a claim would serve no useful purpose.

II.

Insofar as the proposed amendment attempts to state claims against defendant Donovan, it adds nothing beyond what the court considered implicit in the original complaint, and on the basis of which the court denied defendant Donovan's motion to dismiss for the reasons and to the extent stated in Part III of the Memorandum and Order of July 14, 1988. No useful purpose would be served by the filing of this amendment.

ORDER

For the foregoing reasons, it is ORDERED:

Plaintiff's Motion to Amend the Complaint (Docket No. 9) is denied.

Robert E. Keeton

United States District Judge